United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 09-268**
	)	**Issued: October 8, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Washington, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 5, 2008 appellant filed a timely appeal from the October 6, 2008 merit decision of the Office of Workers' Compensation Programs' hearing representative, which affirmed the denial of her recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a recurrence of disability beginning June 24 or July 28, 2005 causally related to her January 12, 2002 employment injury.

FACTUAL HISTORY

On January 12, 2002 appellant, then a 44-year-old rural carrier associate, sustained a lower left back injury in the performance of duty when she lifted bundles of catalogs and turned around. The Office accepted her claim for sacroiliac sprain and lumbar strain. It later accepted L5-S1 radiculopathy. Appellant received compensation for wage loss. On August 11, 2004 she accepted a modified assignment as a rural carrier.

On July 9, 2005 appellant filed a claim alleging that she sustained a recurrence of disability from June 24 to July 5, 2005: "Extreme back and leg pain -- due to L4-L5[,] S1." On August 22, 2005 she filed another recurrence claim beginning July 28, 2005: "This back and leg [pain] has never been better. Inflammation -- pain lower left back and down left leg."

Around May 2005 appellant moved to Decker, Michigan, which meant she had to drive approximately 60 miles to work. She complained that the pain increased because of the time she spent in the car. A June 24, 2005 disability slip indicated that she was unable to work June 24 and 25, 2005. On August 4, 2005 Dr. Robert E.M. Ho, a neurosurgeon, diagnosed lumbar radiculopathy and wrote: "Please relocate patient's workplace to within 10 mile from her home." He gave appellant a disability slip to remain off work. Dr. Ho felt that driving 60 miles one way to go to work was causing irritation to the nerve and a flare-up of appellant's clinical symptoms.

In a decision dated January 31, 2008, the Office denied appellant's recurrence claims on the grounds that she failed to provide medical evidence establishing that her work-related back condition materially worsened without intervening cause to the point she was no longer capable of performing the duties of her rehabilitation job. Further, it noted no factual evidence to support that the rehabilitation job had changed, such that it no longer accommodated appellant's accepted work restrictions.

On October 6, 2008 an Office hearing representative affirmed. He found that the medical evidence did not demonstrate a change in the nature and extent of the accepted work injury but perhaps a change in the claimant's condition due to a lengthy commute. The hearing representative found that the claimed disability may have been due to nonwork events or an independent intervening cause that would not be a natural consequence of the work injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.[2]

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3]

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to

[1] 5 U.S.C. § 8102(a).

[2] 20 C.F.R. § 10.5(f).

[3] *Id*. at § 10.5(x).

establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[4]

ANALYSIS

Following her January 12, 2002 employment injury, appellant accepted a modified assignment. She stopped work on June 24, 2005 and again on July 28, 2005 and claimed compensation for total disability. Appellant has the burden of proof to establish a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements. She did not argue that the employer changed her modified assignment. Appellant argued that she was off work due to her back injury.

The medical evidence supports that appellant was unable to work because of her lumbar radiculopathy. It also supports that the change in her condition was not spontaneous. Appellant had moved to a location approximately 60 miles away from work, and she complained to her doctor that her pain increased because of the time she now spent in the car. Dr. Ho, her neurosurgeon, agreed. He felt that driving 60 miles one way to go to work was causing irritation to the nerve and a flare-up of appellant's clinical symptoms.

So the flare-up of appellant's clinical symptoms was not a direct and natural result of her low back condition; it was the result of her decision to move farther away from work and commute approximately 60 miles each way. The Board finds that appellant's disability beginning June 24 and July 28, 2005 was due to an independent intervening cause and is, accordingly, not compensable.[5]

On appeal, appellant argues that she was not off work due to moving, but the record shows otherwise. Because she failed to submit a well-reasoned medical opinion explaining how her total disability for work beginning June 24 or July 28, 2005 was the result of a spontaneous change in the nature and extent of her accepted employment injury, and not the result of some intervening cause, such as driving 60 miles to work and driving 60 miles back home, the Board finds she has not met her burden of proof. The Board will affirm the Office hearing representative's October 6, 2008 decision denying appellant's recurrence claims.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability beginning June 24 or July 28, 2005 causally related to her January 12, 2002 employment injury.

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[4] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[5] *See Howard S. Wiley*, 7 ECAB 126 (1954) (where the claimant slipped on the front steps of his home as he was leaving for work, causing spasm and rigidity in his low back muscles, and it was not his earlier employment-related lumbosacral subluxation and acute sciatica that caused him to slip, the Board found that the claimed recurrence of disability was not the direct and natural result of the accepted employment injury, but rather was due to an independent intervening cause and was, accordingly, not compensable).

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board